

11(a)(2) and (3) of the Mining and Mineral Resources Research Institute Amendments of 1988 is set out as a note under section 1229 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1201 of this title and Tables.

#### CODIFICATION

Section was enacted as part of the Mining and Mineral Resources Research Institute Act of 1984, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

#### AMENDMENTS

1988—Subsec. (b). Pub. L. 100-483 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Notwithstanding the provisions of subsection (a) of this section, those colleges or universities which, on August 29, 1984, have a mining or mineral resources research institute program which has been found to be eligible pursuant to title III of the Surface Mining Control and Reclamation Act of 1977 (91 Stat. 445) shall continue to be eligible pursuant to this subchapter for a period of four fiscal years beginning October 1, 1984.”

### § 1230a. Strategic Resources Generic Mineral Technology Center

#### (a) Establishment

The Secretary of<sup>1</sup> Interior is authorized and directed to establish a Strategic Resources Mineral Technology Center (hereinafter referred to as the “center”) for the purpose of improving existing, and developing new, technologies that will decrease the dependence of the United States on supplies of strategic and critical minerals.

#### (b) Functions

The center shall—

- (1) provide for studies and technology development in the areas of mineral extraction and refining processes, product substitution and conservation of mineral resources through recycling and advanced processing and fabrication methods;
- (2) identify new deposits of strategic and critical mineral resources; and
- (3) facilitate the transfer of information, studies, and technologies developed by the center to the private sector.

#### (c) Criteria

The Secretary shall establish the center referred to in subsection (a) of this section at a university that—

- (1) does not currently host a generic mineral technology center;
- (2) has established advanced degree programs in geology and geological engineering, and metallurgical and mining engineering;
- (3) has expertise in materials and advanced processing research; and
- (4) is located west of the 100th meridian.

#### (d) Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 98-409, §12, as added Pub. L. 101-498, §2, Nov. 2, 1990, 104 Stat. 1207.)

#### CODIFICATION

Section was enacted as part of the Mining and Mineral Resources Research Institute Act of 1984, and not

as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

### SUBCHAPTER IV—ABANDONED MINE RECLAMATIONS

#### § 1231. Abandoned Mine Reclamation Fund

##### (a) Establishment; administration; State funds

There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the “fund”) which shall be administered by the Secretary of the Interior. State abandoned mine reclamation funds (State funds) generated by grants from this subchapter shall be established by each State pursuant to an approved State program.

##### (b) Sources of deposits to fund

The fund shall consist of amounts deposited in the fund, from time to time derived from—

- (1) the reclamation fees levied under section 1232 of this title;
- (2) any user charge imposed on or for land reclaimed pursuant to this subchapter after expenditures for maintenance have been deducted;
- (3) donations by persons, corporations, associations, and foundations for the purposes of this subchapter;
- (4) recovered moneys as provided for in this subchapter; and
- (5) interest credited to the fund under subsection (e) of this section.

##### (c) Use of moneys

Moneys in the fund may be used for the following purposes:

- (1) reclamation and restoration of land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas, and abandoned coal refuse disposal areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by coal mine drainage including restoration of stream beds, and construction and operation of water treatment plants; prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ; prevention, abatement, and control of coal mine subsidence; and establishment of self-sustaining, individual State administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining in those States which have reclamation plans approved in accordance with section 1253 of this title: *Provided*, That funds used for this purpose shall not exceed \$3,000,000 of the funds made available to any State under section 1232(g)(1) of this title;
- (2) acquisition and filling of voids and sealing of tunnels, shafts, and entryways under section 1239 of this title;
- (3) acquisition of land as provided for in this subchapter;
- (4) enforcement and collection of the reclamation fee provided for in section 1232 of this title;

<sup>1</sup> So in original. Probably should be “of the”.

(5) restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining which constitutes an emergency as provided for in this subchapter;

(6) grants to the States to accomplish the purposes of this subchapter;

(7) administrative expenses of the United States and each State to accomplish the purposes of this subchapter;

(8) for use under section 1240a of this title;

(9) for the purpose of section 1257(c) of this title, except that not more than \$10,000,000 shall annually be available for such purpose;

(10) for the purpose described in section 1232(h) of this title; and

(11) all other necessary expenses to accomplish the purposes of this subchapter.

**(d) Availability of moneys; no fiscal year limitation**

**(1) In general**

Moneys from the fund for expenditures under subparagraphs (A) through (D) of section 1232(g)(3) of this title shall be available only when appropriated for those subparagraphs.

**(2) No fiscal year limitation**

Appropriations described in paragraph (1) shall be made without fiscal year limitation.

**(3) Other purposes**

Moneys from the fund shall be available for all other purposes of this subchapter without prior appropriation as provided in subsection (f).

**(e) Interest**

The Secretary of the Interior shall notify the Secretary of the Treasury as to what portion of the fund is not, in his judgment, required to meet current withdrawals. The Secretary of the Treasury shall invest such portion of the fund in public debt securities with maturities suitable for achieving the purposes of the transfers under section 1232(h) of this title and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to, and form a part of, the fund for the purpose of the transfers under section 1232(h) of this title.

**(f) General limitation on obligation authority**

**(1) In general**

From amounts deposited into the fund under subsection (b), the Secretary shall distribute during each fiscal year beginning after September 30, 2007, an amount determined under paragraph (2).

**(2) Amounts**

**(A) For fiscal years 2008 through 2022**

For each of fiscal years 2008 through 2022, the amount distributed by the Secretary under this subsection shall be equal to—

(i) the amounts deposited into the fund under paragraphs (1), (2), and (4) of subsection (b) for the preceding fiscal year that were allocated under paragraphs (1) and (5) of section 1232(g) of this title; plus

(ii) the amount needed for the adjustment under section 1232(g)(8) of this title for the current fiscal year.

**(B) Fiscal years 2023 and thereafter**

For fiscal year 2023 and each fiscal year thereafter, to the extent that funds are available, the Secretary shall distribute an amount equal to the amount distributed under subparagraph (A) during fiscal year 2022.

**(3) Distribution**

**(A) In general**

Except as provided in subparagraph (B), for each fiscal year, of the amount to be distributed to States and Indian tribes pursuant to paragraph (2), the Secretary shall distribute—

(i) the amounts allocated under paragraph (1) of section 1232(g) of this title, the amounts allocated under paragraph (5) of section 1232(g) of this title, and any amount reallocated under section 1240a(h)(3) of this title in accordance with section 1240a(h)(2) of this title, for grants to States and Indian tribes under section 1232(g)(5) of this title; and

(ii) the amounts allocated under section 1232(g)(8) of this title.

**(B) Exclusion**

Beginning on October 1, 2007, certified States shall be ineligible to receive amounts under section 1232(g)(1) of this title.

**(4) Availability**

Amounts in the fund available to the Secretary for obligation under this subsection shall be available until expended.

**(5) Addition**

**(A) In general**

Subject to subparagraph (B), the amount distributed under this subsection for each fiscal year shall be in addition to the amount appropriated from the fund during the fiscal year.

**(B) Exceptions**

Notwithstanding paragraph (3), the amount distributed under this subsection for the first 4 fiscal years beginning on and after October 1, 2007, shall be equal to the following percentage of the amount otherwise required to be distributed:

- (i) 50 percent in fiscal year 2008.
- (ii) 50 percent in fiscal year 2009.
- (iii) 75 percent in fiscal year 2010.
- (iv) 75 percent in fiscal year 2011.

(Pub. L. 95–87, title IV, §401, Aug. 3, 1977, 91 Stat. 456; Pub. L. 98–473, title I, §101(c) [title III, §324], Oct. 12, 1984, 98 Stat. 1837, 1875; Pub. L. 101–508, title VI, §6002, Nov. 5, 1990, 104 Stat. 1388–289; Pub. L. 102–486, title XIX, §19143(b)(3)(A), title XXV, §2504(c)(1), Oct. 24, 1992, 106 Stat. 3056, 3105; Pub. L. 109–432, div. C, title II, §201(a), Dec. 20, 2006, 120 Stat. 3006.)

AMENDMENTS

2006—Subsec. (c)(2) to (13). Pub. L. 109–432, §201(a)(1), redesignated pars. (3) to (5) and (7) to (13) as (2) to (4)

and (5) to (11), respectively, and struck out former pars. (2) and (6) which read as follows:

“(2) for transfer on an annual basis to the Secretary of Agriculture for use under section 1236 of this title;” and

“(6) studies, research, and demonstration projects by the Department of the Interior to such extent or in such amounts as are provided in appropriation Acts with public and private organizations conducted in accordance with section 3501 of the Omnibus Budget Reconciliation Act of 1986, conducted for the purposes of this subchapter;”.

Subsec. (d). Pub. L. 109-432, §201(a)(2), added subsec. (d) and struck out former subsec. (d) which read as follows: “Moneys from the fund shall be available for the purposes of this subchapter, only when appropriated therefor, and such appropriations shall be made without fiscal year limitations.”

Subsec. (e). Pub. L. 109-432, §201(a)(3), in second sentence, substituted “achieving the purposes of the transfers under section 1232(h) of this title” for “the needs of such fund” and, in third sentence, inserted “for the purpose of the transfers under section 1232(h) of this title” before period at end.

Subsec. (f). Pub. L. 109-432, §201(a)(4), added subsec. (f).

1992—Subsec. (c)(6). Pub. L. 102-486, §2504(c)(1), substituted “studies, research, and demonstration projects” for “studies” and struck out “to provide information, advice, and technical assistance, including research and demonstration projects” after “private organizations”.

Subsec. (c)(12), (13). Pub. L. 102-486, §19143(b)(3)(A), added par. (12) and redesignated former par. (12) as (13).

1990—Subsec. (b)(1). Pub. L. 101-508, §6002(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the reclamation fees levied under section 1232 of this title: *Provided*, That an amount not to exceed 10 per centum of such reclamation fees collected for any calendar quarter shall be reserved beginning in the first calendar year in which the fee is imposed and continuing for the remainder of that fiscal year and for the period in which such fee is imposed by law, for the purpose of section 1257(c) of this title, subject to appropriation pursuant to authorization under section 1302 of this title: *Provided further*, That not more than \$10,000,000 shall be available for such purposes;”.

Subsec. (b)(5). Pub. L. 101-508, §6002(a)(2), added par. (5).

Subsec. (c)(1). Pub. L. 101-508, §6002(b)(1), substituted “section 1232(g)(1)” for “section 1232(g)(2)”.

Subsec. (c)(2). Pub. L. 101-508, §6002(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “for use under section 1236 of this title, by the Secretary of Agriculture, of up to one-fifth of the money deposited in the funds annually and transferred by the Secretary of the Interior to the Secretary of Agriculture for such purposes;”.

Subsec. (c)(6). Pub. L. 101-508, §6002(b)(3), struck out “by contract” after “Department of the Interior” and inserted “conducted in accordance with section 3501 of the Omnibus Budget Reconciliation Act of 1986” after “projects”.

Subsec. (c)(10) to (12). Pub. L. 101-508, §6002(b)(5), added pars. (10) and (11) and redesignated former par. (10) as (12).

Subsec. (e). Pub. L. 101-508, §6002(c), added subsec. (e). 1984—Subsec. (c)(1). Pub. L. 98-473 inserted at end “and establishment of self-sustaining, individual State administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining in those States which have reclamation plans approved in accordance with section 1253 of this title: *Provided*, That funds used for this purpose shall not exceed \$3,000,000 of the funds made available to any State under section 1232(g)(2) of this title;”.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Section 6014 of Pub. L. 101-508 provided that: “The amendments made by this subtitle [subtitle A

(§§6001-6014) of title VI of Pub. L. 101-508, enacting section 1240a of this title and amending this section and sections 1232 to 1237, 1239, 1257, and 1302 of this title] shall take effect at the beginning of the first fiscal year [Oct. 1, 1991] immediately following the fiscal year in which this subtitle is enacted.”

#### SAVINGS PROVISION

Section 6013 of Pub. L. 101-508 provided that: “Nothing in this subtitle [subtitle A (§§6001-6014) of title VI of Pub. L. 101-508, see Short Title of 1990 Amendment note set out under section 1201 of this title] shall be construed to affect the certifications made by the State of Wyoming, the State of Montana, and the State of Louisiana to the Secretary of the Interior prior to the date of enactment of this subtitle [Nov. 5, 1990] that such State has completed the reclamation of eligible abandoned coal mine lands.”

#### ABANDONED MINE RECLAMATION FUND; DEPOSIT AND EXPENDITURE OF CERTAIN DONATIONS

Pub. L. 105-277, div. A, §101(e) [title I], Oct. 21, 1998, 112 Stat. 2681-231, 2681-245, provided in part: “That hereafter, donations received to support projects under the Appalachian Clean Streams Initiative and under the Western Mine Lands Restoration Partnerships Initiative, pursuant to 30 U.S.C. 1231, shall be credited to this account and remain available until expended without further appropriation for projects sponsored under these initiatives, directly through agreements with other Federal agencies, or through grants to States, and funding to local governments, or tax exempt private entities.”

#### ABANDONED MINE RECLAMATION RESEARCH AND DEVELOPMENT

Pub. L. 99-509, title III, §3501, Oct. 21, 1986, 100 Stat. 1891, as amended by Pub. L. 102-285, §10(b), May 18, 1992, 106 Stat. 172, provided that after enactment of Pub. L. 99-509, the research and demonstration authorities of the Department of the Interior under former subsec. (c)(6) of this section were to be transferred to, and carried out by, the Director of the United States Bureau of Mines.

### § 1232. Reclamation fee

#### (a) Payment; rate

All operators of coal mining operations subject to the provisions of this chapter shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of 31.5 cents per ton of coal produced by surface coal mining and 13.5 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less, except that the reclamation fee for lignite coal shall be at a rate of 2 per centum of the value of the coal at the mine, or 9 cents per ton, whichever is less.

#### (b) Due date

Such fee shall be paid no later than thirty days after the end of each calendar quarter beginning with the first calendar quarter occurring after August 3, 1977, and ending September 30, 2021.

#### (c) Submission of statement

Together with such reclamation fee, all operators of coal mine operations shall submit a statement of the amount of coal produced during the calendar quarter, the method of coal removal and the type of coal, the accuracy of which shall be sworn to by the operator and notarized. Such statement shall include an identi-

fication of the permittee of the surface coal mining operation, any operator in addition to the permittee, the owner of the coal, the preparation plant, tripple,<sup>1</sup> or loading point for the coal, and the person purchasing the coal from the operator. The report shall also specify the number of the permit required under section 1256 of this title and the mine safety and health identification number. Each quarterly report shall contain a notification of any changes in the information required by this subsection since the date of the preceding quarterly report. The information contained in the quarterly reports under this subsection shall be maintained by the Secretary in a computerized database.

**(d) Penalty**

(1) Any person, corporate officer, agent or director, on behalf of a coal mine operator, who knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification required in this section shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(2) The Secretary shall conduct such audits of coal production and the payment of fees under this subchapter as may be necessary to ensure full compliance with the provisions of this subchapter. For purposes of performing such audits the Secretary (or any duly designated officer, employee, or representative of the Secretary) shall, at all reasonable times, upon request, have access to, and may copy, all books, papers, and other documents of any person subject to the provisions of this subchapter. The Secretary may at any time conduct audits of any surface coal mining and reclamation operation, including without limitation, tipplines and preparation plants, as may be necessary in the judgment of the Secretary to ensure full and complete payment of the fees under this subchapter.

**(e) Civil action to recover fee**

Any portion of the reclamation fee not properly or promptly paid pursuant to this section shall be recoverable, with statutory interest, from coal mine operators, in any court of competent jurisdiction in any action at law to compel payment of debts.

**(f) Cooperation from other agencies**

All Federal and State agencies shall fully cooperate with the Secretary of the Interior in the enforcement of this section. Whenever the Secretary believes that any person has not paid the full amount of the fee payable under subsection (a) of this section the Secretary shall notify the Federal agency responsible for ensuring compliance with the provisions of section 4121 of title 26.

**(g) Allocation of funds**

(1) Except as provided in subsection (h) of this section, moneys deposited into the fund shall be allocated by the Secretary to accomplish the purposes of this subchapter as follows:

(A) 50 percent of the reclamation fees collected annually in any State (other than fees

collected with respect to Indian lands) shall be allocated annually by the Secretary to the State, subject to such State having each of the following:

(i) An approved abandoned mine reclamation program pursuant to section 1235 of this title.

(ii) Lands and waters which are eligible pursuant to section 1234 of this title (in the case of a State not certified under section 1240a(a) of this title) or pursuant to section 1240a(b) of this title (in the case of a State certified under section 1240a(a) of this title).

(B) 50 percent of the reclamation fees collected annually with respect to Indian lands shall be allocated annually by the Secretary to the Indian tribe having jurisdiction over such lands, subject to such tribe having each of the following:

(i) an<sup>2</sup> approved abandoned mine reclamation program pursuant to section 1235 of this title.

(ii) Lands and waters which are eligible pursuant to section 1234 of this title (in the case of an Indian tribe not certified under section 1240a(a) of this title) or pursuant to section 1240a(b) of this title (in the case of a tribe certified under section 1240a(a) of this title).

(C) The funds allocated by the Secretary under this paragraph to States and Indian tribes shall only be used for annual reclamation project construction and program administration grants.

(D) To the extent not expended within 3 years after the date of any grant award under this paragraph (except for grants awarded during fiscal years 2008, 2009, and 2010 to the extent not expended within 5 years), such grant shall be available for expenditure by the Secretary under paragraph (5).

(2) In making the grants referred to in paragraph (1)(C) and the grants referred to in paragraph (5), the Secretary shall ensure strict compliance by the States and Indian tribes with the priorities described in section 1233(a) of this title until a certification is made under section 1240a(a) of this title.

(3) Amounts available in the fund which are not allocated to States and Indian tribes under paragraph (1) or allocated under paragraph (5) are authorized to be expended by the Secretary for any of the following:

(A) For the purpose of section 1257(c) of this title, either directly or through grants to the States, subject to the limitation contained in section 1231(c)(9) of this title.

(B) For the purpose of section 1240 of this title (relating to emergencies).

(C) For the purpose of meeting the objectives of the fund set forth in section 1233(a) of this title for eligible lands and waters pursuant to section 1234 of this title in States and on Indian lands where the State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 1235 of this title.

(D) For the administration of this subchapter by the Secretary.

<sup>1</sup> So in original. Probably should be "tripple".

<sup>2</sup> So in original. Probably should be capitalized.

(E) For the purpose of paragraph (8).

(4)(A) Amounts available in the fund which are not allocated under paragraphs (1), (2), and (5) or expended under paragraph (3) in any fiscal year are authorized to be expended by the Secretary under this paragraph for the reclamation or drainage abatement of lands and waters within unreclaimed sites which are mined for coal or which were affected by such mining, waste-banks, coal processing or other coal mining processes and left in an inadequate reclamation status.

(B) Funds made available under this paragraph may be used for reclamation or drainage abatement at a site referred to in subparagraph (A) if the Secretary makes either of the following findings:

(i) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before the date on which the Secretary approved a State program pursuant to section 1253 of this title for a State in which the site is located, and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site.

(ii) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before November 5, 1990, and that the surety of such mining operator became insolvent during such period, and as of November 5, 1990, funds immediately available from proceedings relating to such insolvency, or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

(C) In determining which sites to reclaim pursuant to this paragraph, the Secretary shall follow the priorities stated in paragraphs (1) and (2) of section 1233(a) of this title. The Secretary shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community.

(D) Amounts collected from the assessment of civil penalties under section 1268 of this title are authorized to be appropriated to carry out this paragraph.

(E) Any State may expend grants made available under paragraphs (1) and (5) for reclamation and abatement of any site referred to in subparagraph (A) if the State, with the concurrence of the Secretary, makes either of the findings referred to in clause (i) or (ii) of subparagraph (B) and if the State determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for eligible lands and waters pursuant to section 1234 of this title under the priorities stated in paragraphs (1) and (2) of section 1233(a) of this title.

(F) For the purposes of the certification referred to in section 1240a(a) of this title, sites referred to in subparagraph (A) of this paragraph shall be considered as having the same priorities as those stated in section 1233(a) of this title for eligible lands and waters pursuant to section

1234 of this title. All sites referred to in subparagraph (A) of this paragraph within any State shall be reclaimed prior to such State making the certification referred to in section 1240a(a) of this title.

(5)(A) The Secretary shall allocate 60 percent of the amount in the fund after making the allocation referred to in paragraph (1) for making additional annual grants to States and Indian tribes which are not certified under section 1240a(a) of this title to supplement grants received by such States and Indian tribes pursuant to paragraph (1)(C) until the priorities stated in paragraphs (1) and (2) of section 1233(a) of this title have been achieved by such State or Indian tribe. The allocation of such funds for the purpose of making such expenditures shall be through a formula based on the amount of coal historically produced in the State or from the Indian lands concerned prior to August 3, 1977. Funds made available under paragraph (3) or (4) of this subsection for any State or Indian tribe shall not be deducted against any allocation of funds to the State or Indian tribe under paragraph (1) or under this paragraph.

(B) Any amount that is reallocated and available under section 1240a(h)(3) of this title shall be in addition to amounts that are allocated under subparagraph (A).

(6)(A) Any State with an approved abandoned mine reclamation program pursuant to section 1235 of this title may receive and retain, without regard to the 3-year limitation referred to in paragraph (1)(D), up to 30 percent of the total of the grants made annually to the State under paragraphs (1) and (5) if those amounts are deposited into an acid mine drainage abatement and treatment fund established under State law, from which amounts (together with all interest earned on the amounts) are expended by the State for the abatement of the causes and the treatment of the effects of acid mine drainage in a comprehensive manner within qualified hydrologic units affected by coal mining practices.

(B) In this paragraph, the term "qualified hydrologic unit" means a hydrologic unit—

(i) in which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(ii) that contains land and water that are—

(I) eligible pursuant to section 1234 of this title and include any of the priorities described in section 1233(a) of this title; and

(II) the subject of expenditures by the State from the forfeiture of bonds required under section 1259 of this title or from other States sources to abate and treat acid mine drainage.

(7) In complying with the priorities described in section 1233(a) of this title, any State or Indian tribe may use amounts available in grants made annually to the State or tribe under paragraphs (1) and (5) for the reclamation of eligible land and water described in section 1233(a)(3) of this title before the completion of reclamation projects under paragraphs (1) and (2) of section 1233(a) of this title only if the expenditure of funds for the reclamation is done in conjunction with the expenditure before, on, or after December 20, 2006, of funds for reclamation projects

under paragraphs (1) and (2) of section 1233(a) of this title.

(8)(A) In making funds available under this subchapter, the Secretary shall ensure that the grant awards total not less than \$3,000,000 annually to each State and each Indian tribe having an approved abandoned mine reclamation program pursuant to section 1235 of this title and eligible land and water pursuant to section 1234 of this title, so long as an allocation of funds to the State or tribe is necessary to achieve the priorities stated in paragraphs (1) and (2) of section 1233(a) of this title.

(B) Notwithstanding any other provision of law, this paragraph applies to the States of Tennessee and Missouri.

**(h) Transfers of interest earned by Fund**

**(1) In general**

**(A) Transfers to Combined Benefit Fund**

As soon as practicable after the beginning of fiscal year 2007 and each fiscal year thereafter, and before making any allocation with respect to the fiscal year under subsection (g), the Secretary shall use an amount not to exceed the amount of interest that the Secretary estimates will be earned and paid to the fund during the fiscal year to transfer to the Combined Benefit Fund such amounts as are estimated by the trustees of such fund to offset the amount of any deficit in net assets in the Combined Benefit Fund as of October 1, 2006, and to make the transfer described in paragraph (2)(A).

**(B) Transfers to 1992 and 1993 plans**

As soon as practicable after the beginning of fiscal year 2008 and each fiscal year thereafter, and before making any allocation with respect to the fiscal year under subsection (g), the Secretary shall use an amount not to exceed the amount of interest that the Secretary estimates will be earned and paid to the fund during the fiscal year (reduced by the amount used under subparagraph (A)) to make the transfers described in paragraphs (2)(B) and (2)(C).

**(2) Transfers described**

The transfers referred to in paragraph (1) are the following:

**(A) United Mine Workers of America Combined Benefit Fund**

A transfer to the United Mine Workers of America Combined Benefit Fund equal to the amount that the trustees of the Combined Benefit Fund estimate will be expended from the fund for the fiscal year in which the transfer is made, reduced by—

(i) the amount the trustees of the Combined Benefit Fund estimate the Combined Benefit Fund will receive during the fiscal year in—

(I) required premiums; and

(II) payments paid by Federal agencies in connection with benefits provided by the Combined Benefit Fund; and

(ii) the amount the trustees of the Combined Benefit Fund estimate will be expended during the fiscal year to provide

health benefits to beneficiaries who are unassigned beneficiaries solely as a result of the application of section 9706(h)(1) of title 26, but only to the extent that such amount does not exceed the amounts described in subsection (i)(1)(A) that the Secretary estimates will be available to pay such estimated expenditures.

**(B) United Mine Workers of America 1992 Benefit Plan**

A transfer to the United Mine Workers of America 1992 Benefit Plan, in an amount equal to the difference between—

(i) the amount that the trustees of the 1992 UMWA Benefit Plan estimate will be expended from the 1992 UMWA Benefit Plan during the next calendar year to provide the benefits required by the 1992 UMWA Benefit Plan on December 20, 2006; minus

(ii) the amount that the trustees of the 1992 UMWA Benefit Plan estimate the 1992 UMWA Benefit Plan will receive during the next calendar year in—

(I) required monthly per beneficiary premiums, including the amount of any security provided to the 1992 UMWA Benefit Plan that is available for use in the provision of benefits; and

(II) payments paid by Federal agencies in connection with benefits provided by the 1992 UMWA Benefit Plan.

**(C) Multiemployer Health Benefit Plan**

A transfer to the Multiemployer Health Benefit Plan established after July 20, 1992, by the parties that are the settlors of the 1992 UMWA Benefit Plan referred to in subparagraph (B) (referred to in this subparagraph and subparagraph (D) as “the Plan”), in an amount equal to the excess (if any) of—

(i) the amount that the trustees of the Plan estimate will be expended from the Plan during the next calendar year, to provide benefits no greater than those provided by the Plan as of December 31, 2006; over

(ii) the amount that the trustees estimated the Plan will receive during the next calendar year in payments paid by Federal agencies in connection with benefits provided by the Plan.

Such excess shall be calculated by taking into account only those beneficiaries actually enrolled in the Plan as of December 31, 2006, who are eligible to receive benefits under the Plan on the first day of the calendar year for which the transfer is made.

**(D) Individuals considered enrolled**

For purposes of subparagraph (C), any individual who was eligible to receive benefits from the Plan as of December 20, 2006, even though benefits were being provided to the individual pursuant to a settlement agreement approved by order of a bankruptcy court entered on or before September 30, 2004, will be considered to be actually enrolled in the Plan and shall receive benefits from the Plan beginning on December 31, 2006.

**(3) Adjustment**

If, for any fiscal year, the amount of a transfer under subparagraph (A), (B), or (C) of paragraph (2) is more or less than the amount required to be transferred under that subparagraph, the Secretary shall appropriately adjust the amount transferred under that subparagraph for the next fiscal year.

**(4) Additional amounts****(A) Previously credited interest**

Notwithstanding any other provision of law, any interest credited to the fund that has not previously been transferred to the Combined Benefit Fund referred to in paragraph (2)(A) under this section—

(i) shall be held in reserve by the Secretary until such time as necessary to make the payments under subparagraphs (A) and (B) of subsection (i)(1), as described in clause (ii); and

(ii) in the event that the amounts described in subsection (i)(1) are insufficient to make the maximum payments described in subparagraphs (A) and (B) of subsection (i)(1), shall be used by the Secretary to supplement the payments so that the maximum amount permitted under those paragraphs is paid.

**(B) Previously allocated amounts**

All amounts allocated under subsection (g)(2) before December 20, 2006, for the program described in section 1236 of this title, but not appropriated before December 20, 2006, shall be available to the Secretary to make the transfers described in paragraph (2).

**(C) Adequacy of previously credited interest**

The Secretary shall—

(i) consult with the trustees of the plans described in paragraph (2) at reasonable intervals; and

(ii) notify Congress if a determination is made that the amounts held in reserve under subparagraph (A) are insufficient to meet future requirements under subparagraph (A)(ii).

**(D) Additional reserve amounts**

In addition to amounts held in reserve under subparagraph (A), there is authorized to be appropriated such sums as may be necessary for transfer to the fund to carry out the purposes of subparagraph (A)(ii).

**(E) Inapplicability of cap**

The limitation described in subsection (i)(3)(A) shall not apply to payments made from the reserve fund under this paragraph.

**(5) Limitations****(A) Availability of funds for next fiscal year**

The Secretary may make transfers under subparagraphs (B) and (C) of paragraph (2) for a calendar year only if the Secretary determines, using actuarial projections provided by the trustees of the Combined Benefit Fund referred to in paragraph (2)(A), that amounts will be available under paragraph (1), after the transfer, for the next fiscal

year for making the transfer under paragraph (2)(A).

**(B) Rate of contributions of obligors****(i) In general****(I) Rate**

A transfer under paragraph (2)(C) shall not be made for a calendar year unless the persons that are obligated to contribute to the plan referred to in paragraph (2)(C) on the date of the transfer are obligated to make the contributions at rates that are no less than those in effect on the date which is 30 days before December 20, 2006.

**(II) Application**

The contributions described in subclause (I) shall be applied first to the provision of benefits to those plan beneficiaries who are not described in paragraph (2)(C)(ii).

**(ii) Initial contributions****(I) In general**

From December 20, 2006, through December 31, 2010, the persons that, on December 20, 2006, are obligated to contribute to the plan referred to in paragraph (2)(C) shall be obligated, collectively, to make contributions equal to the amount described in paragraph (2)(C), less the amount actually transferred due to the operation of subparagraph (C).

**(II) First calendar year**

Calendar year 2006 is the first calendar year for which contributions are required under this clause.

**(III) Amount of contribution for 2006**

Except as provided in subclause (IV), the amount described in paragraph (2)(C) for calendar year 2006 shall be calculated as if paragraph (2)(C) had been in effect during 2005.

**(IV) Limitation**

The contributions required under this clause for calendar year 2006 shall not exceed the amount necessary for solvency of the plan described in paragraph (2)(C), measured as of December 31, 2006, and taking into account all assets held by the plan as of that date.

**(iii) Division**

The collective annual contribution obligation required under clause (ii) shall be divided among the persons subject to the obligation, and applied uniformly, based on the hours worked for which contributions referred to in clause (i) would be owed.

**(C) Phase-in of transfers**

For each of calendar years 2008 through 2010, the transfers required under subparagraphs (B) and (C) of paragraph (2) shall equal the following amounts:

(i) For calendar year 2008, the Secretary shall make transfers equal to 25 percent of the amounts that would otherwise be re-

quired under subparagraphs (B) and (C) of paragraph (2).

(ii) For calendar year 2009, the Secretary shall make transfers equal to 50 percent of the amounts that would otherwise be required under subparagraphs (B) and (C) of paragraph (2).

(iii) For calendar year 2010, the Secretary shall make transfers equal to 75 percent of the amounts that would otherwise be required under subparagraphs (B) and (C) of paragraph (2).

#### **(i) Funding**

##### **(1) In general**

Subject to paragraph (3), out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the plans described in subsection (h)(2) such sums as are necessary to pay the following amounts:

(A) To the Combined Fund (as defined in section 9701(a)(5) of title 26 and referred to in this paragraph as the “Combined Fund”), the amount that the trustees of the Combined Fund estimate will be expended from premium accounts maintained by the Combined Fund for the fiscal year to provide benefits for beneficiaries who are unassigned beneficiaries solely as a result of the application of section 9706(h)(1) of title 26, subject to the following limitations:

(i) For fiscal year 2008, the amount paid under this subparagraph shall equal—

(I) the amount described in subparagraph (A); minus

(II) the amounts required under section 9706(h)(3)(A) of title 26.

(ii) For fiscal year 2009, the amount paid under this subparagraph shall equal—

(I) the amount described in subparagraph (A); minus

(II) the amounts required under section 9706(h)(3)(B) of title 26.

(iii) For fiscal year 2010, the amount paid under this subparagraph shall equal—

(I) the amount described in subparagraph (A); minus

(II) the amounts required under section 9706(h)(3)(C) of title 26.

(B) On certification by the trustees of any plan described in subsection (h)(2) that the amount available for transfer by the Secretary pursuant to this section (determined after application of any limitation under subsection (h)(5)) is less than the amount required to be transferred, to the plan the amount necessary to meet the requirement of subsection (h)(2).

(C) To the Combined Fund, \$9,000,000 on October 1, 2007, \$9,000,000 on October 1, 2008, \$9,000,000 on October 1, 2009, and \$9,000,000 on October 1, 2010 (which amounts shall not be exceeded) to provide a refund of any premium (as described in section 9704(a) of title 26) paid on or before September 7, 2000, to the Combined Fund, plus interest on the premium calculated at the rate of 7.5 percent per year, on a proportional basis and to be paid not later than 60 days after the date on which each payment is received by the Com-

bined Fund, to those signatory operators (to the extent that the Combined Fund has not previously returned the premium amounts to the operators), or any related persons to the operators (as defined in section 9701(c) of title 26), or their heirs, successors, or assigns who have been denied the refunds as the result of final judgments or settlements if—

(i) prior to December 20, 2006, the signatory operator (or any related person to the operator)—

(I) had all of its beneficiary assignments made under section 9706 of title 26 voided by the Commissioner of the Social Security Administration; and

(II) was subject to a final judgment or final settlement of litigation adverse to a claim by the operator that the assignment of beneficiaries under section 9706 of title 26 was unconstitutional as applied to the operator; and

(ii) on or before September 7, 2000, the signatory operator (or any related person to the operator) had paid to the Combined Fund any premium amount that had not been refunded.

##### **(2) Payments to States and Indian tribes**

Subject to paragraph (3), out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of the Interior for distribution to States and Indian tribes such sums as are necessary to pay amounts described in paragraphs (1)(A) and (2)(A) of section 1240a(h) of this title.

##### **(3) Limitations**

###### **(A) Cap**

The total amount transferred under this subsection for any fiscal year shall not exceed \$490,000,000.

###### **(B) Insufficient amounts**

In a case in which the amount required to be transferred without regard to this paragraph exceeds the maximum annual limitation in subparagraph (A), the Secretary shall adjust the transfers of funds so that—

(i) each transfer for the fiscal year is a percentage of the amount described;

(ii) the amount is determined without regard to subsection (h)(5)(A); and

(iii) the percentage transferred is the same for all transfers made under this subsection for the fiscal year.

##### **(4) Availability of funds**

Funds shall be transferred under paragraphs (1) and (2) beginning in fiscal year 2008 and each fiscal year thereafter, and shall remain available until expended.

(Pub. L. 95–87, title IV, §402, Aug. 3, 1977, 91 Stat. 457; Pub. L. 100–34, title I, §101, May 7, 1987, 101 Stat. 300; Pub. L. 101–508, title VI, §§6003, 6004, Nov. 5, 1990, 104 Stat. 1388–290, 1388–291; Pub. L. 102–486, title XIX, §19143(b)(1), (2), (3)(B), title XXV, §2515, Oct. 24, 1992, 106 Stat. 3056, 3113; Pub. L. 108–447, div. E, title I, §135(a), Dec. 8, 2004, 118 Stat. 3068; Pub. L. 109–13, div. A, title VI, §6035, May 11, 2005, 119 Stat. 289; Pub. L. 109–54, title I,



§ 129, Aug. 2, 2005, 119 Stat. 525; Pub. L. 109-234, title VII, § 7007, June 15, 2006, 120 Stat. 483; Pub. L. 109-432, div. C, title II, § 202, Dec. 20, 2006, 120 Stat. 3008; Pub. L. 110-343, div. C, title VI, § 602, Oct. 3, 2008, 122 Stat. 3911.)

#### AMENDMENT OF SUBSECTION (a)

*Pub. L. 109-432, div. C, title II, § 202(a)(2), Dec. 20, 2006, 120 Stat. 3008, provided that, effective Oct. 1, 2012, subsection (a) of this section is amended by substituting “28” for “31.5”, “12” for “13.5”, and “8 cents” for “9 cents”.*

#### CODIFICATION

November 5, 1990, referred to in subsec. (g)(4)(B)(ii), was in the original “the date of enactment of this paragraph”, which was translated as meaning the date of enactment of Pub. L. 101-508, which amended this section generally, to reflect the probable intent of Congress.

#### AMENDMENTS

2008—Subsec. (i)(1)(C). Pub. L. 110-343 substituted “\$9,000,000 on October 1, 2009, and \$9,000,000 on October 1, 2010” for “and \$9,000,000 on October 1, 2009” in introductory provisions.

2006—Subsec. (a). Pub. L. 109-432, § 202(a)(1), substituted “31.5” for “35”, “13.5” for “15”, and “9 cents” for “10 cents”.

Subsec. (b). Pub. L. 109-432, § 202(b), substituted “September 30, 2021” for “September 30, 2007, after which time the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h) of this section”.

Pub. L. 109-234 substituted “September 30, 2007” for “June 30, 2006”.

Subsec. (g)(1)(D). Pub. L. 109-432, § 202(c)(1), inserted “(except for grants awarded during fiscal years 2008, 2009, and 2010 to the extent not expended within 5 years)” after “this paragraph” and substituted “under paragraph (5)” for “in any area under paragraph (2), (3), (4), or (5)”.

Subsec. (g)(2). Pub. L. 109-432, § 202(c)(2), added par. (2) and struck out former par. (2) which read as follows: “20 percent of the amounts available in the fund in any fiscal year which are not allocated under paragraph (1) in that fiscal year (including that interest accruing as provided in section 1231(e) of this title and including funds available for reallocation pursuant to paragraph (1)(D)), shall be allocated to the Secretary only for the purpose of making the annual transfer to the Secretary of Agriculture under section 1231(c)(2) of this title.”

Subsec. (g)(3). Pub. L. 109-432, § 202(c)(3)(A), substituted “paragraph (5)” for “paragraphs (2) and (5)” in introductory provisions.

Subsec. (g)(3)(A). Pub. L. 109-432, § 202(c)(3)(B), substituted “1231(c)(9)” for “1231(c)(11)”.

Subsec. (g)(3)(E). Pub. L. 109-432, § 202(c)(3)(C), added subpar. (E).

Subsec. (g)(5). Pub. L. 109-432, § 202(c)(4), designated existing provisions as subpar. (A), in first sentence, substituted “60” for “40”, in last sentence, substituted “Funds made available under paragraph (3) or (4)” for “Funds allocated or expended by the Secretary under paragraphs (2), (3), or (4)”, and added subpar. (B).

Subsec. (g)(6) to (8). Pub. L. 109-432, § 202(c)(5), added pars. (6) to (8) and struck out former pars. (6) to (8) which related to authority of any State to receive and retain up to 10 percent of the total of grants, State authority to establish an acid mine drainage abatement and treatment fund and to implement plans for acid mine drainage abatement and treatment, and allocation of not less than \$2,000,000 annually for expenditure in each State and for each Indian tribe, having an approved reclamation program and eligible lands and waters.

Subsecs. (h), (i). Pub. L. 109-432, § 202(d), added subsecs. (h) and (i) and struck out former subsec. (h) which

related to transfer of funds to the United Mine Workers of America Combined Benefit Fund.

2005—Subsec. (b). Pub. L. 109-54 substituted “June 30, 2006” for “September 30, 2005”.

Pub. L. 109-13 substituted “September 30, 2005” for “June 30, 2005”.

2004—Subsec. (b). Pub. L. 108-447 substituted “June 30, 2005” for “September 30, 2004”.

1992—Subsec. (b). Pub. L. 102-486, § 2515, which directed that subsec. (b) be amended by substituting “2004, after which time the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h) of this section” for “1995”, was executed by inserting “”, after which time the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h) of this section” after “2004”, to reflect the probable intent of Congress and the intervening amendment by Pub. L. 102-486, § 19143(b)(1). See below.

Pub. L. 102-486, § 19143(b)(1), substituted “2004” for “1995” before period at end.

Subsec. (g)(1). Pub. L. 102-486, § 19143(b)(3)(B), substituted “Except as provided in subsection (h) of this section, moneys” for “Moneys”.

Subsec. (h). Pub. L. 102-486, § 19143(b)(2), added subsec. (h).

1990—Subsec. (b). Pub. L. 101-508, § 6003(a), substituted “ending September 30, 1995” for “ending fifteen years after August 3, 1977, unless extended by an Act of Congress”.

Subsec. (c). Pub. L. 101-508, § 6003(b), inserted at end “Such statement shall include an identification of the permittee of the surface coal mining operation, any operator in addition to the permittee, the owner of the coal, the preparation plant, tripple, or loading point for the coal, and the person purchasing the coal from the operator. The report shall also specify the number of the permit required under section 1256 of this title and the mine safety and health identification number. Each quarterly report shall contain a notification of any changes in the information required by this subsection since the date of the preceding quarterly report. The information contained in the quarterly reports under this subsection shall be maintained by the Secretary in a computerized database.”

Subsec. (d). Pub. L. 101-508, § 6003(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (f). Pub. L. 101-508, § 6003(d), inserted at end “Whenever the Secretary believes that any person has not paid the full amount of the fee payable under subsection (a) of this section the Secretary shall notify the Federal agency responsible for ensuring compliance with the provisions of section 4121 of title 26.”

Subsec. (g). Pub. L. 101-508, § 6004, amended subsec. (g) generally, substituting present provisions for provisions relating to geographic allocation of expenditures from the fund, providing for allocation of 50 percent of funds collected annually in any State or Indian reservation to that State or Indian reservation pursuant to approved reclamation program, providing for special State set-aside for future expenditure, and authorizing expenditure of balance of funds collected at discretion of Secretary in order to meet the purposes of this subchapter.

1987—Subsec. (g)(3), (4). Pub. L. 100-34 added par. (3) and redesignated former par. (3) as (4).

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. C, title II, § 202(a)(1), Dec. 20, 2006, 120 Stat. 3008, provided that the amendment made by section 202(a)(1) [amending this section] is effective Oct. 1, 2007.

Pub. L. 109-432, div. C, title II, § 202(a)(2), Dec. 20, 2006, 120 Stat. 3008, provided that the amendment made by section 202(a)(2) [amending this section] is effective Oct. 1, 2012.

Pub. L. 109-432, div. C, title II, § 202(b), Dec. 20, 2006, 120 Stat. 3008, provided that the amendment made by section 202(b) [amending this section] is effective Sept. 30, 2007.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101-508 set out as a note under section 1231 of this title.

**§ 1233. Objectives of fund****(a) Priorities**

Expenditure of moneys from the fund on lands and water eligible pursuant to section 1234 of this title for the purposes of this subchapter, except as provided for under section 1240a of this title, shall reflect the following priorities in the order stated:

(1)(A) the protection;<sup>1</sup> of public health, safety, and property from extreme danger of adverse effects of coal mining practices;

(B) the restoration of land and water resources and the environment that—

(i) have been degraded by the adverse effects of coal mining practices; and

(ii) are adjacent to a site that has been or will be remediated under subparagraph (A);

(2)(A) the protection of public health and safety from adverse effects of coal mining practices;

(B) the restoration of land and water resources and the environment that—

(i) have been degraded by the adverse effects of coal mining practices; and

(ii) are adjacent to a site that has been or will be remediated under subparagraph (A); and

(3) the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.

**(b) Water supply restoration**

(1) Any State or Indian tribe not certified under section 1240a(a) of this title may expend funds allocated to such State or Indian tribe in any year through the grants made available under paragraphs (1) and (5) of section 1232(g) of this title for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

(2) If the adverse effect on water supplies referred to in this subsection occurred both prior to and after August 3, 1977, or as the case may be, the dates (and under the criteria) set forth under section 1232(g)(4)(B) of this title, section 1234 of this title shall not be construed to prohibit a State or Indian tribe referred to in paragraph (1) from using funds referred to in such paragraph for the purposes of this subsection if the State or Indian tribe determines that such adverse effects occurred predominantly prior to August 3, 1977, or as the case may be, the dates (and under the criteria) set forth under section 1232(g)(4)(B) of this title.

<sup>1</sup> So in original.

**(c) Inventory**

For the purposes of assisting in the planning and evaluation of reclamation projects pursuant to section 1235 of this title, and assisting in making the certification referred to in section 1240a(a) of this title, the Secretary shall maintain an inventory of eligible lands and waters pursuant to section 1234 of this title which meet the priorities stated in paragraphs (1) and (2) of subsection (a) of this section. Under standardized procedures established by the Secretary, States and Indian tribes with approved abandoned mine reclamation programs pursuant to section 1235 of this title may offer amendments, subject to the approval of the Secretary, to update the inventory as it applies to eligible lands and waters under the jurisdiction of such States or tribes. The Secretary shall provide such States and tribes with the financial and technical assistance necessary for the purpose of making inventory amendments. The Secretary shall compile and maintain an inventory for States and Indian lands in the case when a State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 1235 of this title. On a regular basis, but not less than annually, the projects completed under this subchapter shall be so noted on the inventory under standardized procedures established by the Secretary.

(Pub. L. 95-87, title IV, § 403, Aug. 3, 1977, 91 Stat. 458; Pub. L. 101-508, title VI, § 6005, Nov. 5, 1990, 104 Stat. 1388-294; Pub. L. 102-486, title XXV, § 2504(c)(2), (e), Oct. 24, 1992, 106 Stat. 3105, 3106; Pub. L. 109-432, div. C, title II, § 203, Dec. 20, 2006, 120 Stat. 3015.)

## AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109-432, § 203(1)(A), designated existing provisions as subpar. (A), inserted semicolon after “protection”, struck out “general welfare,” after “safety,” and added subpar. (B).

Subsec. (a)(2). Pub. L. 109-432, § 203(1)(B), designated existing provisions as subpar. (A), substituted “health and safety” for “health, safety, and general welfare”, and added subpar. (B).

Subsec. (a)(3). Pub. L. 109-432, § 203(1)(C), which directed that a period be substituted for the semicolon at end, could not be executed because a period already appeared at end.

Subsec. (a)(4), (5). Pub. L. 109-432, § 203(1)(D), struck out pars. (4) and (5) which read as follows:

“(4) the protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices;

“(5) the development of publicly owned land adversely affected by coal mining practices including land acquired as provided in this subchapter for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.”

Subsec. (b). Pub. L. 109-432, § 203(2)(A), substituted “Water supply restoration” for “Utilities and other facilities” in heading.

Subsec. (b)(1). Pub. L. 109-432, § 203(2)(B), struck out “up to 30 percent of the” before “funds”.

Subsec. (c). Pub. L. 109-432, § 203(3), inserted “, subject to the approval of the Secretary,” after “amendments” in second sentence.

1992—Subsec. (a)(4) to (6). Pub. L. 102-486, § 2504(c)(2), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which read as follows: “research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques;”.

Subsec. (b)(2). Pub. L. 102-486, §2504(e), inserted “, or as the case may be, the dates (and under the criteria) set forth under section 1232(g)(4)(B) of this title” after “1977” in two places.

1990—Pub. L. 101-508 designated existing provisions as subsec. (a), inserted heading and “, except as provided for under section 1240a of this title,” after “subchapter”, and added subsecs. (b) and (c).

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101-508 set out as a note under section 1231 of this title.

### § 1234. Eligible lands and water

Lands and water eligible for reclamation or drainage abatement expenditures under this subchapter are those which were mined for coal or which were affected by such mining, waste-banks, coal processing, or other coal mining processes, except as provided for under section 1240a of this title, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws. For other provisions relating to lands and waters eligible for such expenditures, see section 1232(g)(4) of this title, section 1233(b)(1) of this title, and section 1239 of this title. Surface coal mining operations on lands eligible for reining shall not affect the eligibility of such lands for reclamation and restoration under this subchapter after the release of the bond or deposit for any such operation as provided under section 1269 of this title. In the event the bond or deposit for a surface coal mining operation on lands eligible for reining is forfeited, funds available under this subchapter may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the Secretary shall immediately exercise his authority under section 1240 of this title.

(Pub. L. 95-87, title IV, §404, Aug. 3, 1977, 91 Stat. 459; Pub. L. 101-508, title VI, §6006, Nov. 5, 1990, 104 Stat. 1388-295; Pub. L. 102-486, title XXV, §2503(d), Oct. 24, 1992, 106 Stat. 3103.)

#### AMENDMENTS

1992—Pub. L. 102-486 inserted at end “Surface coal mining operations on lands eligible for reining shall not affect the eligibility of such lands for reclamation and restoration under this subchapter after the release of the bond or deposit for any such operation as provided under section 1269 of this title. In the event the bond or deposit for a surface coal mining operation on lands eligible for reining is forfeited, funds available under this subchapter may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the Secretary shall immediately exercise his authority under section 1240 of this title.”

1990—Pub. L. 101-508 inserted “, except as provided for under section 1240a of this title” after “processes” and inserted at end “For other provisions relating to lands and waters eligible for such expenditures, see section 1232(g)(4) of this title, section 1233(b)(1) of this title, and section 1239 of this title.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101-508 set out as a note under section 1231 of this title.

### § 1235. State reclamation program

#### (a) Promulgation of regulations

Not later than the end of the one hundred and eighty-day period immediately following August 3, 1977, the Secretary shall promulgate and publish in the Federal Register regulations covering implementation of an abandoned mine reclamation program incorporating the provisions of this subchapter and establishing procedures and requirements for preparation, submission, and approval of State programs consisting of the plan and annual submissions of projects.

#### (b) Submission of State Reclamation Plan and annual projects

Each State having within its borders coal mined lands eligible for reclamation under this subchapter, may submit to the Secretary a State Reclamation Plan and annual projects to carry out the purposes of this subchapter.

#### (c) Restriction

The Secretary shall not approve, fund, or continue to fund a State abandoned mine reclamation program unless that State has an approved State regulatory program pursuant to section 1253 of this title.

#### (d) Approval of State program; withdrawal

If the Secretary determines that a State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of this subchapter, sections 1232 and 1240 of this title excepted, the Secretary shall approve such State program and shall grant to the State exclusive responsibility and authority to implement the provisions of the approved program: *Provided*, That the Secretary shall withdraw such approval and authorization if he determines upon the basis of information provided under this section that the State program is not in compliance with the procedures, guidelines, and requirements established under subsection (a) of this section.

#### (e) Contents of State Reclamation Plan

Each State Reclamation Plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with the provisions of this subchapter.

#### (f) Annual application for support; contents

On an annual basis, each State having an approved State Reclamation Plan may submit to the Secretary an application for the support of the State program and implementation of specific reclamation projects. Such annual requests shall include such information as may be requested by the Secretary including:

- (1) a general description of each proposed project;
- (2) a priority evaluation of each proposed project;
- (3) a statement of the estimated benefits in such terms as: number of acres restored, miles

of stream improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution, hazards of mine and coal refuse disposal area fires;

(4) an estimate of the cost for each proposed project;

(5) in the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;

(6) an identification of lands or interest therein to be acquired and the estimated cost; and

(7) in each year after the first in which a plan is filed under this subchapter, an inventory of each project funded under the previous year's grant: which inventory shall include details of financial expenditures on such project together with a brief description of each such project, including project locations, landowner's name, acreage, type of reclamation performed.

#### **(g) Costs**

The costs for each proposed project under this section shall include: actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

#### **(h) Grant of funds**

Upon approval of State Reclamation Plan by the Secretary and of the surface mine regulatory program pursuant to section 1253 of this title, the Secretary shall grant, on an annual basis, funds to be expended in such State pursuant to section 1232(g) of this title and which are necessary to implement the State reclamation program as approved by the Secretary.

#### **(i) Program monitorship**

The Secretary, through his designated agents, will monitor the progress and quality of the program. The States shall not be required at the start of any project to submit complete copies of plans and specifications.

#### **(j) Annual report to Secretary**

The Secretary shall require annual and other reports as may be necessary to be submitted by each State administering the approved State reclamation program with funds provided under this subchapter. Such reports shall include that information which the Secretary deems necessary to fulfill his responsibilities under this subchapter.

#### **(k) Eligible lands of Indian tribes**

Indian tribes having within their jurisdiction eligible lands pursuant to section 1234 of this title or from which coal is produced, shall be considered as a "State" for the purposes of this subchapter except for purposes of subsection (c) of this section with respect to the Navajo, Hopi and Crow Indian Tribes.

#### **(l) State liability**

No State shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out a State abandoned mine reclamation plan approved under this section. This sub-

section shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(Pub. L. 95-87, title IV, § 405, Aug. 3, 1977, 91 Stat. 459; Pub. L. 100-71, title I, July 11, 1987, 101 Stat. 416; Pub. L. 101-508, title VI, §§ 6007, 6012(d)(1), (2), Nov. 5, 1990, 104 Stat. 1388-295, 1388-298.)

#### **AMENDMENTS**

1990—Subsec. (a). Pub. L. 101-508, § 6012(d)(1), substituted "preparation" for "perparation".

Subsec. (h). Pub. L. 101-508, § 6012(d)(2), substituted "Upon approval" for "Upon approved".

Subsec. (l). Pub. L. 101-508, § 6007, added subsec. (l).

1987—Subsec. (k). Pub. L. 100-71, which directed the amendment of subsec. (k) by inserting "except for purposes of subsection (c) of this section with respect to the Navajo, Hopi and Crow Indian Tribes" at the end thereof, was executed by making the insertion before the period to reflect the probable intent of Congress.

#### **EFFECTIVE DATE OF 1990 AMENDMENT**

Amendment by Pub. L. 101-508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101-508 set out as a note under section 1231 of this title.

#### **GRANT OF FUNDS TO STATES UNDER SURFACE MINING CONTROL AND RECLAMATION ACT**

Pub. L. 97-377, title I, § 150, Dec. 21, 1982, 96 Stat. 1918, provided that: "Within 60 days of receipt of a complete abandoned mine reclamation fund grant application from any eligible State under the provisions of the Surface Mining Control and Reclamation Act (91 Stat. 460) [Pub. L. 95-87, see Short Title note set out under section 1201 of this title] the Secretary of Interior shall grant to such State any and all funds available for such purposes in the applicable appropriations Act."

### **§ 1236. Reclamation of rural lands**

#### **(a) Agreements with landowners for conservation treatment**

In order to provide for the control and prevention of erosion and sediment damages from unreclaimed mined lands, and to promote the conservation and development of soil and water resources of unreclaimed mined lands and lands affected by mining, the Secretary of Agriculture is authorized to enter into agreements of not more than ten years with landowners (including owners of water rights), residents, and tenants, and individually or collectively, determined by him to have control for the period of the agreement of lands in question therein, providing for land stabilization, erosion, and sediment control, and reclamation through conservation treatment, including measures for the conservation and development of soil, water (excluding stream channelization), woodland, wildlife, and recreation resources, and agricultural productivity of such lands. Such agreements shall be made by the Secretary with the owners, including owners of water rights, residents, or tenants (collectively or individually) of the lands in question.

#### **(b) Conservation and development plans**

The landowner, including the owner of water rights, resident, or tenant shall furnish to the Secretary of Agriculture a conservation and development plan setting forth the proposed land

uses and conservation treatment which shall be mutually agreed by the Secretary of Agriculture and the landowner, including owner of water rights, resident, or tenant to be needed on the lands for which the plan was prepared. In those instances where it is determined that the water rights or water supply of a tenant, landowner, including owner of water rights, resident, or tenant have been adversely affected by a surface or underground coal mine operation which has removed or disturbed a stratum so as to significantly affect the hydrologic balance, such plan may include proposed measures to enhance water quality or quantity by means of joint action with other affected landowners, including owner of water rights, residents, or tenants in consultation with appropriate State and Federal agencies.

**(c) Agreement to effect plan**

Such plan shall be incorporated in an agreement under which the landowner, including owner of water rights, resident, or tenant shall agree with the Secretary of Agriculture to effect the land uses and conservation treatment provided for in such plan on the lands described in the agreement in accordance with the terms and conditions thereof.

**(d) Financial and other assistance; determination by Secretary**

In return for such agreement by the landowner, including owner of water rights, resident, or tenant, the Secretary of Agriculture is authorized to furnish financial and other assistance to such landowner, including owner of water rights, resident, or tenant, in such amounts and subject to such conditions as the Secretary of Agriculture determines are appropriate in the public interest for carrying out the land use and conservation treatment set forth in the agreement. Grants made under this section, depending on the income-producing potential of the land after reclaiming, shall provide up to 80 per centum of the cost of carrying out such land uses and conservation treatment on not more than one hundred and twenty acres of land occupied by such owner, including water rights owners, resident, or tenant, or on not more than one hundred and twenty acres of land which has been purchased jointly by such landowners, including water rights owners, residents, or tenants, under an agreement for the enhancement of water quality or quantity or on land which has been acquired by an appropriate State or local agency for the purpose of implementing such agreement; except the Secretary may reduce the matching cost share where he determines that (1) the main benefits to be derived from the project are related to improving offsite water quality, offsite esthetic values, or other offsite benefits, and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program: *Provided, however*, That the Secretary of Agriculture may allow for land use and conservation treatment on such lands occupied by any such owner in excess of such one hundred and twenty acre limitation up to three hundred and twenty acres, but in such event the amount of the grant to such landowner to carry out such reclamation on such

lands shall be reduced proportionately. Notwithstanding any other provision of this section with regard to acreage limitations, the Secretary of Agriculture may carry out reclamation treatment projects to control erosion and improve water quality on all lands within a hydrologic unit, consisting of not more than 25,000 acres, if the Secretary determines that treatment of such lands as a hydrologic unit will achieve greater reduction in the adverse effects of past surface mining practices than would be achieved if reclamation was done on individual parcels of land.

**(e) Termination of agreements**

The Secretary of Agriculture may terminate any agreement with a landowner including water rights owners, operator, or occupier by mutual agreement if the Secretary of Agriculture determines that such termination would be in the public interest, and may agree to such modification of agreements previously entered into hereunder as he deems desirable to carry out the purposes of this section or to facilitate the practical administration of the program authorized herein.

**(f) Preservation and surrender of history and allotments**

Notwithstanding any other provision of law, the Secretary of Agriculture, to the extent he deems it desirable to carry out the purposes of this section, may provide in any agreement hereunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of such crop; or (2) surrender of any such history and allotments.

**(g) Rules and regulations**

The Secretary of Agriculture shall be authorized to issue such rules and regulations as he determines are necessary to carry out the provisions of this section.

**(h) Utilization of Natural Resources Conservation Service**

In carrying out the provisions of this section, the Secretary of Agriculture shall utilize the services of the Natural Resources Conservation Service.

**(i) Authorization of appropriations**

There are authorized to be appropriated to the Secretary of Agriculture, from amounts in the Treasury other than amounts in the fund, such sums as may be necessary to carry out this section.

(Pub. L. 95-87, title IV, §406, Aug. 3, 1977, 91 Stat. 460; Pub. L. 97-98, title XV, §1551, Dec. 22, 1981, 95 Stat. 1344; Pub. L. 101-508, title VI, §§6008, 6012(c), (d)(3), Nov. 5, 1990, 104 Stat. 1388-295, 1388-298; Pub. L. 109-432, div. C, title II, §204, Dec. 20, 2006, 120 Stat. 3016.)

AMENDMENTS

2006—Subsec. (h). Pub. L. 109-432, §204(a), substituted “Natural Resources Conservation Service” for “Soil Conservation Service”.

Subsec. (i). Pub. L. 109-432, §204(b), added subsec. (i). 1990—Subsec. (a). Pub. L. 101-508, §6012(d)(3), which directed the substitution of “(including owners” for “including owners” was executed the first time that phrase appeared to reflect the probable intent of Congress, because the parenthetical statement concluding with “water rights)” was enacted without an opening parenthesis.

Subsec. (d). Pub. L. 101-508, §6008, struck out “experimental” before “reclamation treatment projects” in last sentence.

Subsec. (i). Pub. L. 101-508, §6012(c), repealed subsec. (i) which read as follows: “Funds shall be made available to the Secretary of Agriculture for the purposes of this section, as provided in section 1231 of this title.”

1981—Subsec. (d). Pub. L. 97-98 inserted provisions that notwithstanding any other provision of this section with regard to acreage limitations, the Secretary may carry out experimental reclamation treatment projects to control erosion and improve water quality on all lands within a hydrologic unit, consisting of not more than 25,000 acres, if the Secretary determines that treatment of such lands as a hydrologic unit will achieve greater reduction in the adverse effects of past surface mining practices than would be achieved if reclamation was done on individual parcels of land.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101-508 set out as a note under section 1231 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97-98, set out as an Effective Date note under section 4301 of Title 7, Agriculture.

### § 1237. Acquisition and reclamation of land adversely affected by past coal mining practices

#### (a) Findings of fact; notice; right of entry

If the Secretary or the State pursuant to an approved State program, makes a finding of fact that—

(1) land or water resources have been adversely affected by past coal mining practices; and

(2) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or

(4) the owners will not give permission for the United States, the States, political subdivisions, their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

then, upon giving notice by mail to the owners if known or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality in which the land lies, the Secretary, his agents, employees, or contractors, or the State pursuant to an approved State program, shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to re-

store, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: *Provided, however*, That this provision is not intended to create new rights of action or eliminate existing immunities.

#### (b) Studies or exploratory work

The Secretary, his agents, employees, or contractors or the State pursuant to an approved State program, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

#### (c) Requirements for acquisition of affected land

The Secretary or the State pursuant to an approved State program, may acquire any land, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if the Secretary determines that acquisition of such land is necessary to successful reclamation and that—

(1) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space benefits; and

(2) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(3) acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this subchapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

#### (d) Title to affected land; value

Title to all lands acquired pursuant to this section shall be in the name of the United States or, if acquired by a State pursuant to an approved program, title shall be in the name of the State. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

#### (e) State participation; grants

States are encouraged as part of their approved State programs, to reclaim abandoned

and unreclaimed mined lands within their boundaries and, if necessary, to acquire or to transfer such lands to the Secretary or the appropriate State regulatory authority under appropriate Federal regulations. The Secretary is authorized to make grants on a matching basis to States in such amounts as he deems appropriate for the purpose of carrying out the provisions of this subchapter but in no event shall any grant exceed 90 per centum of the cost of acquisition of the lands for which the grant is made. When a State has made any such land available to the Federal Government under this subchapter, such State shall have a preference right to purchase such lands after reclamation at fair market value less the State portion of the original acquisition price. Notwithstanding the provisions of paragraph (1) of subsection (c) of this section, reclaimed land may be sold to the State or local government in which it is located at a price less than fair market value, which in no case shall be less than the cost to the United States of the purchase and reclamation of the land, as negotiated by the Secretary, to be used for a valid public purpose. If any land sold to a State or local government under this paragraph is not used for a valid public purpose as specified by the Secretary in the terms of the sales agreement then all right, title, and interest in such land shall revert to the United States. Money received from such sale shall be deposited in the fund.

**(f) Rules and regulations**

The Secretary, in formulating regulations for making grants to the States to acquire land pursuant to this section, shall specify that acquired land meet the criteria provided for in subsections (c) and (d) of this section. The Secretary may provide by regulation that money derived from the lease, rental, or user charges of such acquired land and facilities thereon will be deposited in the fund.

**(g) Public sale; notice and hearing**

(1) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential, or recreational development, the Secretary may sell or authorize the States to sell such land by public sale under a system of competitive bidding, at not less than fair market value and under such other regulations promulgated to insure that such lands are put to proper use consistent with local and State land use plans, if any, as determined by the Secretary.

(2) The Secretary or the State pursuant to an approved State program, when requested after appropriate public notice shall hold a public hearing, with the appropriate notice, in the county or counties or the appropriate subdivisions of the State in which lands acquired pursuant to this section are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

**(h) Construction or rehabilitation of housing for disabled, displaced, or dislocated persons; grants**

In addition to the authority to acquire land under subsection (d) of this section the Secretary is authorized to use money in the fund to acquire land by purchase, donation, or condemnation, and to reclaim and transfer acquired land to any State or to a political subdivision thereof, or to any person, firm, association, or corporation, if he determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as provided in section 1240 of this title or persons dislocated as the result of natural disasters or catastrophic failures from any cause. Such activities shall be accomplished under such terms and conditions as the Secretary shall require, which may include transfers of land with or without monetary consideration: *Provided*, That, to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or corporation. No part of the funds provided under this subchapter may be used to pay the actual construction costs of housing. The Secretary may carry out the purposes of this subsection directly or he may make grants and commitments for grants, and may advance money under such terms and conditions as he may require to any State, or any department, agency, or instrumentality of a State, or any public body or nonprofit organization designated by a State.

(Pub. L. 95-87, title IV, § 407, Aug. 3, 1977, 91 Stat. 462; Pub. L. 101-508, title VI, § 6012(d)(4)-(7), Nov. 5, 1990, 104 Stat. 1388-298.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-508, § 6012(d)(4), (5), substituted a semicolon for the period at end of par. (4) and “then, upon giving notice” for “Then, upon giving notice” in concluding provisions.

Subsec. (e). Pub. L. 101-508, § 6012(d)(6), substituted “paragraph (1) of subsection (c) of this section” for “paragraph (1), of this subsection”.

Subsec. (g)(2). Pub. L. 101-508, § 6012(d)(7), substituted “use or” for “use of” before “disposition”.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101-508 set out as a note under section 1231 of this title.

**§ 1238. Liens**

**(a) Filing of statement and appraisal**

Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the Secretary or the State, pursuant to an approved State program, shall itemize the moneys so expended and may file a statement thereof in the office of the

county in which the land lies which has the responsibility under local law for the recording of judgments against land, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices if the moneys so expended shall result in a significant increase in property value. Such statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this subsection, who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

**(b) Petition**

The landowner may proceed as provided by local law to petition within sixty days of the filing of the lien, to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by local law.

**(c) Recordation**

The lien provided in this section shall be entered in the county office in which the land lies and which has responsibility under local law for the recording of judgments against land. Such statement shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said land.

(Pub. L. 95-87, title IV, § 408, Aug. 3, 1977, 91 Stat. 465; Pub. L. 109-432, div. C, title II, § 205, Dec. 20, 2006, 120 Stat. 3016.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-432 struck out “who owned the surface prior to May 2, 1977, and” after “this subsection,” in last sentence.

**§ 1239. Filling voids and sealing tunnels**

**(a) Congressional declaration of hazardous conditions**

The Congress declares that voids, and open and abandoned tunnels, shafts, and entryways resulting from any previous mining operation, constitute a hazard to the public health or safety and that surface impacts of any underground or surface mining operation may degrade the environment. The Secretary, at the request of the Governor of any State, or the the<sup>1</sup> governing body of an Indian tribe, is authorized to fill such voids, seal such abandoned tunnels, shafts, and entryways, and reclaim surface impacts of un-

derground or surface mines which the Secretary determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment. State regulatory authorities are authorized to carry out such work pursuant to an approved abandoned mine reclamation program.

**(b) Limitation on funds**

Funds available for use in carrying out the purpose of this section shall be limited to those funds which must be allocated to the respective States or Indian tribes under the provisions of paragraphs (1) and (5) of section 1232(g) of this title.

**(c) Limitation on expenditures**

(1) The Secretary may make expenditures and carry out the purposes of this section in such States where requests are made by the Governor or governing body of an Indian tribe for those reclamation projects which meet the priorities stated in section 1233(a)(1) of this title, except that for the purposes of this section the reference to coal in section 1233(a)(1) of this title shall not apply.

(2) The provisions of section 1234 of this title shall apply to this section, with the exception that such mined lands need not have been mined for coal.

(3) The Secretary shall not make any expenditures for the purposes of this section in those States which have made the certification referred to in section 1240a(a) of this title.

**(d) Disposal of mine wastes**

In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding providing that the disposal of these wastes meets the purposes of this section.

**(e) Land acquisition**

The Secretary may acquire by purchase, donation, easement, or otherwise such interest in land as he determines necessary to carry out the provisions of this section.

(Pub. L. 95-87, title IV, § 409, Aug. 3, 1977, 91 Stat. 465; Pub. L. 101-508, title VI, § 6009, Nov. 5, 1990, 104 Stat. 1388-296.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-508, § 6009(1), substituted “the governing body of an Indian tribe” for “chairman of any tribe”.

Subsec. (b). Pub. L. 101-508, § 6009(2), substituted “Indian tribes under the provisions of paragraphs (1) and (5) of section 1232(g) of this title” for “Indian reservations under the provisions of subsection 1232(g) of this title”.

Subsec. (c). Pub. L. 101-508, § 6009(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The Secretary may make expenditures and carry out the purposes of this section without regard to provisions of section 1234 of this title in such States or Indian reservations where requests are made by the Governor or tribal chairman and only after all reclamation with respect to abandoned coal lands or coal development impacts have been met, except for those reclamation projects relating to the protection of the public health or safety.”

<sup>1</sup> So in original.



## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101-508 set out as a note under section 1231 of this title.

**§ 1240. Emergency powers**

(a) The Secretary is authorized to expend moneys from the fund for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices, on eligible lands, if the Secretary makes a finding of fact that—

(1) an emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

(b) The Secretary, his agents, employees, and contractors shall have the right to enter upon any land where the emergency exists and any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare. Such entry shall be construed as an exercise of the police power and shall not be construed as an act of condemnation of property nor of trespass thereof. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: *Provided, however,* That this provision is not intended to create new rights of action or eliminate existing immunities.

(Pub. L. 95-87, title IV, § 410, Aug. 3, 1977, 91 Stat. 466.)

**§ 1240a. Certification****(a) Certification of completion of coal reclamation**

(1) The Governor of a State, or the head of a governing body of an Indian tribe, with an approved abandoned mine reclamation program under section 1235 of this title may certify to the Secretary that all of the priorities stated in section 1233(a) of this title for eligible lands and waters pursuant to section 1234 of this title have been achieved. The Secretary, after notice in the Federal Register and opportunity for public comment, shall concur with such certification if the Secretary determines that such certification is correct.

(2)(A) The Secretary may, on the initiative of the Secretary, make the certification referred to in paragraph (1) on behalf of any State or Indian tribe referred to in paragraph (1) if on the basis of the inventory referred to in section 1233(c) of this title all reclamation projects relating to the priorities described in section 1233(a) of this title for eligible land and water pursuant to section 1234 of this title in the State or tribe have been completed.

(B) The Secretary shall only make the certification after notice in the Federal Register and opportunity for public comment.

**(b) Eligible lands, waters, and facilities**

If the Secretary has concurred in a State or tribal certification under subsection (a) of this section, for purposes of determining the eligibility of lands and waters for annual grants under section 1232(g)(1) of this title, section 1234 of this title shall not apply, and eligible lands, waters, and facilities shall be those—

(1) which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

(2) for which there is no continuing reclamation responsibility under State or other Federal laws. In determining the eligibility under this subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date referred to in paragraph (1) the applicable date shall be August 28, 1974, and November 26, 1980, respectively.

**(c) Priorities**

Expenditures of moneys for lands, waters, and facilities referred to in subsection (b) of this section shall reflect the following objectives and priorities in the order stated (in lieu of the priorities set forth in section 1233 of this title):

(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of mineral mining and processing practices.

(2) The protection of public health, safety, and general welfare from adverse effects of mineral mining and processing practices.

(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

**(d) Specific sites and areas not eligible**

Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this section.

**(e) Utilities and other facilities**

Reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices, shall be deemed part of the objectives set forth, and undertaken as they relate to, the priorities stated in subsection (c) of this section.

**(f) Public facilities related to coal or minerals industry**

Notwithstanding subsection (e) of this section, where the Secretary has concurred in the certification referenced in subsection (a) of this

section and where the Governor of a State or the head of a governing body of an Indian tribe determines there is a need for activities or construction of specific public facilities related to the coal or minerals industry in States impacted by coal or minerals development and the Secretary concurs in such need, then the State or Indian tribe, as the case may be, may use annual grants made available under section 1232(g)(1) of this title to carry out such activities or construction.

**(g) Application of other provisions**

The provisions of sections 1237 and 1238 of this title shall apply to subsections (a) through (e) of this section, except that for purposes of this section the references to coal in sections 1237 and 1238 of this title shall not apply.

**(h) Payments to States and Indian tribes**

**(1) In general**

**(A) Payments**

**(i) In general**

Notwithstanding section 1231(f)(3)(B) of this title, from funds referred to in section 1232(i)(2) of this title, the Secretary shall make payments to States or Indian tribes for the amount due for the aggregate unappropriated amount allocated to the State or Indian tribe under subparagraph (A) or (B) of section 1232(g)(1) of this title.

**(ii) Conversion as equivalent payments**

Amounts allocated under subparagraph (A) or (B) of section 1232(g)(1) of this title shall be reallocated to the allocation established in section 1232(g)(5) of this title in amounts equivalent to payments made to States or Indian tribes under this paragraph.

**(B) Amount due**

In this paragraph, the term “amount due” means the unappropriated amount allocated to a State or Indian tribe before October 1, 2007, under subparagraph (A) or (B) of section 1232(g)(1) of this title.

**(C) Schedule**

Payments under subparagraph (A) shall be made in 7 equal annual installments, beginning with fiscal year 2008.

**(D) Use of funds**

**(i) Certified States and Indian tribes**

A State or Indian tribe that makes a certification under subsection (a) in which the Secretary concurs shall use any amounts provided under this paragraph for the purposes established by the State legislature or tribal council of the Indian tribe, with priority given for addressing the impacts of mineral development.

**(ii) Uncertified States and Indian tribes**

A State or Indian tribe that has not made a certification under subsection (a) in which the Secretary has concurred shall use any amounts provided under this paragraph for the purposes described in section 1233 of this title.

**(2) Subsequent State and Indian tribe share for certified States and Indian tribes**

**(A) In general**

Notwithstanding section 1231(f)(3)(B) of this title, from funds referred to in section 1232(i)(2) of this title, the Secretary shall pay to each certified State or Indian tribe an amount equal to the sum of the aggregate unappropriated amount allocated on or after October 1, 2007, to the certified State or Indian tribe under subparagraph (A) or (B) of section 1232(g)(1) of this title.

**(B) Certified State or Indian tribe defined**

In this paragraph the term “certified State or Indian tribe” means a State or Indian tribe for which a certification is made under subsection (a) in which the Secretary concurs.

**(3) Manner of payment**

**(A) In general**

Subject to subparagraph (B), payments to States or Indian tribes under this subsection shall be made without regard to any limitation in section 1231(d) of this title and concurrently with payments to States under that section.

**(B) Initial payments**

The first 3 payments made to any State or Indian tribe shall be reduced to 25 percent, 50 percent, and 75 percent, respectively, of the amounts otherwise required under paragraph (2)(A).

**(C) Installments**

Amounts withheld from the first 3 annual installments as provided under subparagraph (B) shall be paid in 2 equal annual installments beginning with fiscal year 2018.

**(4) Reallocation**

**(A) In general**

The amount allocated to any State or Indian tribe under subparagraph (A) or (B) of section 1232(g)(1) of this title that is paid to the State or Indian tribe as a result of a payment under paragraph (1) or (2) shall be reallocated and available for grants under section 1232(g)(5) of this title.

**(B) Allocation**

The grants shall be allocated based on the amount of coal historically produced before August 3, 1977, in the same manner as under section 1232(g)(5) of this title.

(Pub. L. 95–87, title IV, §411, as added Pub. L. 101–508, title VI, §6010(2), Nov. 5, 1990, 104 Stat. 1388–296; amended Pub. L. 109–432, div. C, title II, §206, Dec. 20, 2006, 120 Stat. 3016.)

REFERENCES IN TEXT

The Uranium Mill Tailings Radiation Control Act of 1978, referred to in subsec. (d), is Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, as amended, which is classified principally to chapter 88 (§7901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7901 of Title 42 and Tables.

The Comprehensive Environmental Response Compensation and Liability Act of 1980, referred to in sub-

sec. (d), probably means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

#### PRIOR PROVISIONS

A prior section 411 of Pub. L. 95-87 was renumbered section 412 and was classified to section 1241 of this title, prior to being omitted from the Code.

#### AMENDMENTS

2006—Subsec. (a). Pub. L. 109-432, §206(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 109-432, §206(2), added subsec. (h).

#### EFFECTIVE DATE

Section effective Oct. 1, 1991, see section 6014 of Pub. L. 101-508 set out as an Effective Date of 1990 Amendment note under section 1231 of this title.

### § 1241. Omitted

#### CODIFICATION

Section, Pub. L. 95-87, title IV, §412, formerly §411, Aug. 3, 1977, 91 Stat. 466, renumbered §412, Pub. L. 101-508, title VI, §6010(1), Nov. 5, 1990, 104 Stat. 1388-296, which required the Secretary of the Interior or the State pursuant to an approved State program to report to Congress annually on operations under the fund together with recommendations for future use of the fund, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 109 of House Document No. 103-7.

### § 1242. Powers of Secretary or State

#### (a) Engage in work, promulgate rules and regulations, etc., to implement and administer this subchapter

The Secretary or the State pursuant to an approved State program, shall have the power and authority, if not granted it otherwise, to engage in any work and to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of this subchapter.

#### (b) Engage in cooperative projects

The Secretary or the State pursuant to an approved State program, shall have the power and authority to engage in cooperative projects under this subchapter with any other agency of the United States of America, any State and their governmental agencies.

#### (c) Request for action to restrain interference with regard to this subchapter

The Secretary or the State pursuant to an approved State program, may request the Attorney General, who is hereby authorized to initiate, in addition to any other remedies provided for in this subchapter, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this subchapter.

#### (d) Construct and operate plants for control and treatment of water pollution resulting from mine drainage

The Secretary or the State pursuant to an approved State program, shall have the power and

authority to construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water: *Provided*, That the above provisions of this paragraph shall not be deemed in any way to repeal or supersede any portion of the Federal Water Pollution Control Act (33 U.S.C.A. 1151, et seq. as amended) [33 U.S.C. 1251 et seq.] and no control or treatment under this subsection shall in any way be less than that required under the Federal Water Pollution Control Act. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

#### (e) Transfer funds

The Secretary may transfer funds to other appropriate Federal agencies, in order to carry out the reclamation activities authorized by this subchapter.

(Pub. L. 95-87, title IV, §413, formerly §412, Aug. 3, 1977, 91 Stat. 466, renumbered §413, Pub. L. 101-508, title VI, §6010(1), Nov. 5, 1990, 104 Stat. 1388-296.)

#### REFERENCES IN TEXT

The Federal Water Pollution Control Act (33 U.S.C.A. 1151, et seq. as amended), referred to in subsec. (d), is act June 30, 1948, ch. 758, 62 Stat. 1155, formerly classified to chapter 23 (§1151 et seq.) of Title 33, Navigation and Navigable Waters, which was completely revised by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, and is classified generally to chapter 26 (§1251 et seq.) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

#### PRIOR PROVISIONS

A prior section 413 of Pub. L. 95-87 was renumbered section 414 and is classified to section 1243 of this title.

### § 1243. Interagency cooperation

All departments, boards, commissioners, and agencies of the United States of America shall cooperate with the Secretary by providing technical expertise, personnel, equipment, materials, and supplies to implement and administer the provisions of this subchapter.

(Pub. L. 95-87, title IV, §414, formerly §413, Aug. 3, 1977, 91 Stat. 467, renumbered §414, Pub. L. 101-508, title VI, §6010(1), Nov. 5, 1990, 104 Stat. 1388-296.)

### § 1244. Remining incentives

#### (a) In general

Notwithstanding any other provision of this chapter, the Secretary may, after opportunity for public comment, promulgate regulations that describe conditions under which amounts in the fund may be used to provide incentives to promote remining of eligible land under section 1234 of this title in a manner that leverages the use of amounts from the fund to achieve more reclamation with respect to the eligible land than would be achieved without the incentives.

#### (b) Requirements

Any regulations promulgated under subsection (a) shall specify that the incentives shall apply

only if the Secretary determines, with the concurrence of the State regulatory authority referred to in subchapter V, that, without the incentives, the eligible land would not be likely to be mined and reclaimed.

**(c) Incentives**

**(1) In general**

Incentives that may be considered for inclusion in the regulations promulgated under subsection (a) include, but are not limited to—

(A) a rebate or waiver of the reclamation fees required under section 1232(a) of this title; and

(B) the use of amounts in the fund to provide financial assurance for remining operations in lieu of all or a portion of the performance bonds required under section 1259 of this title.

**(2) Limitations**

**(A) Use**

A rebate or waiver under paragraph (1)(A) shall be used only for operations that—

(i) remove or reprocess abandoned coal mine waste; or

(ii) conduct remining activities that meet the priorities specified in paragraph (1) or (2) of section 1233(a) of this title.

**(B) Amount**

The amount of a rebate or waiver provided as an incentive under paragraph (1)(A) to remine or reclaim eligible land shall not exceed the estimated cost of reclaiming the eligible land under this section.

(Pub. L. 95–87, title IV, §415, as added Pub. L. 109–432, div. C, title II, §207, Dec. 20, 2006, 120 Stat. 3018.)

**SUBCHAPTER V—CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING**

**§ 1251. Environmental protection standards**

(a) Not later than the end of the ninety-day period immediately following August 3, 1977, the Secretary shall promulgate and publish in the Federal Register regulations covering an interim regulatory procedure for surface coal mining and reclamation operations setting mining and reclamation performance standards based on and incorporating the provisions set out in section 1252(c) of this title. The issuance of the interim regulations shall be deemed not to be a major Federal action within the meaning of section 4332(2)(c)<sup>1</sup> of title 42. Such regulations, which shall be concise and written in plain, understandable language shall not be promulgated and published by the Secretary until he has—

(A) published proposed regulations in the Federal Register and afforded interested persons and State and local governments a period of not less than thirty days after such publication to submit written comments thereon;

(B) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those regulations promulgated under this section which relate

to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.]; and the Clean Air Act, as amended [42 U.S.C. 7401 et seq.]; and

(C) held at least one public hearing on the proposed regulations.

The date, time, and place of any hearing held on the proposed regulations shall be set out in the publication of the proposed regulations. The Secretary shall consider all comments and relevant data presented at such hearing before final promulgation and publication of the regulations.

(b) Not later than one year after August 3, 1977, the Secretary shall promulgate and publish in the Federal Register regulations covering a permanent regulatory procedure for surface coal mining and reclamation operations performance standards based on and conforming to the provisions of this subchapter and establishing procedures and requirements for preparation, submission, and approval of State programs; and development and implementation of Federal programs under the subchapter. The Secretary shall promulgate these regulations, which shall be concise and written in plain, understandable language in accordance with the procedures in subsection (a) of this section.

(Pub. L. 95–87, title V, §501, Aug. 3, 1977, 91 Stat. 467.)

**REFERENCES IN TEXT**

The Federal Water Pollution Control Act, referred to in subsec. (a)(B), is act June 30, 1948, ch. 758, 62 Stat. 1155, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (a)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

**§ 1251a. Abandoned coal refuse sites**

(1) Notwithstanding any other provision of the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.] to the contrary, the Secretary of the Interior shall, within one year after October 24, 1992, publish proposed regulations in the Federal Register, and after opportunity for public comment publish final regulations, establishing environmental protection performance and reclamation standards, and separate permit systems applicable to operations for the on-site reprocessing of abandoned coal refuse and operations for the removal of abandoned coal refuse on lands that would otherwise be eligible for expenditure under section 404 and section 402(g)(4) of the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1234, 1232(g)(4)].

(2) The standards and permit systems referred to in paragraph (1) shall distinguish between those operations which reprocess abandoned coal refuse on-site, and those operations which completely remove abandoned coal refuse from a

<sup>1</sup> So in original. Probably should be “4332(2)(C)”.